



BOARD OF PAROLE HEARINGS

1515 "K" Street, Sixth Floor
Sacramento, CA 95814

ADMINISTRATIVE DIRECTIVE (AD) NO. 09/01

SUBJECT: PENAL CODE STATUTES ENACTED BY PROPOSITION 9 THAT ALLOW AN ADVANCED HEARING DATE

The November 2008 passage of Proposition 9, Marsy's Law, resulted in amendments to Penal Code section 3041.5(b) that increased the length of time between parole hearings when there is a denial of parole. Proposition 9 also adds provisions to the statute that allows the Board or an inmate to advance the date of the hearing so that it may be conducted earlier than proscribed in the last denial. This Administrative Directive will clarify the hearing date advancement provisions set forth in Penal Code section 3041.5.

Penal Code section 3041.5(b)(4) gives the Board discretion to advance the hearing date any time there is a change in circumstance or new information establishing a reasonable likelihood that consideration of the public and victim's safety does not require that the prisoner serve the additional period of incarceration that was determined at the last hearing at which parole was denied. In exercising its discretion, the statute requires the Board to consider the views and interests of the victim. This section does not set forth a minimum time period that must be served from the hearing at which the denial length was determined.

Penal Code section 3041.5(d)(1) through (3) allows the inmate to request the Board to exercise its discretion to advance a hearing date. The request must be made to the Board in writing, with notice, upon request to the victim. The Board will perform this notice function to avoid disclosure of the victim's address to the inmate.

Penal Code section 3041.5(d)(1) requires the inmate's petition to set forth the change in circumstance or new information that establishes a reasonable likelihood that consideration of public safety does not require the additional period of incarceration of the inmate. Penal Code section 3041.5(d)(2) gives the Board sole jurisdiction, after considering the views and interest of the victim, to determine whether to grant or deny the prisoner's request. The Board shall have the power to summarily deny a request that does not comply with the provisions of the subdivision or does not set forth the change in circumstance that the inmate does not require the additional period of incarceration as determined at the last hearing denial.

Penal Code section 3041.5(d)(3) allows the inmate to make one request for an advanced hearing date during each three year period, regardless of the denial length. If the request is granted and the inmate receives a denial at the advanced hearing, or if the request is summarily denied, the inmate cannot submit another request for an advanced hearing until a three-year period of time has elapsed from either the date of the summary denial or the advanced hearing

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The foregoing statutory provisions have been enacted into law and must be given immediate effect notwithstanding regulatory amendments the Board will promulgate to implement the new statutory provisions. The Board is currently in the process of identifying the regulations that need to be added or amended.

Questions concerning this directive may be addressed to Anna Awiszus, Assistant General Counsel, at (916) 323-1643.

Sincerely,

A handwritten signature in black ink, appearing to read 'Martin Hoshino', with a stylized flourish at the end.

Martin Hoshino
Executive Officer